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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,523	03/15/2004	Robert L. Sutherland	7214	3206

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EXAMINER

POLICOFF, STEVEN B

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/801,523	Applicant(s) SUTHERLAND ET AL.	
	Examiner JILA MOHANDESI	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19, 21-24 and 28-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19, 21-24, and 28-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 5/23/06 have been fully considered but they are not persuasive. With respect to applicant's argument that Harris does not disclose a secondary cut line that is significantly further from the terminal edge of the inner flap than the rest of the cut line, applicant provides no evidence in the specification or otherwise to support the criticality of the shape and design of the cut line and since the Harris cut line design performs the same function no weight is given to the slight difference in shape of the cut line. In response to applicant's argument that the Harris locking system does not lie flat, it is noted that the features upon which applicant relies (i.e., the locking system lying flat) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). While Harris does not explicitly show the locking arrangement of the bottom panel, Harris does disclose that the cutout/primary lock ledge (ref 56) engages the primary locking tab/male lock (ref 50) and that the slits (ref 58) are adapted to receive secondary locking tabs (ref 52) (column 3, lines 9-17). This arrangement parallels the locking arrangement of the bottom panel of the present application. Harris also discloses that the bottles rest substantially flat against the bottom panel (i.e. that the bottom panel locking arrangement lies flat enabling the bottles to rest flat) (column 4, lines 35-38). Furthermore, a comparison of Fig 8 of the present application and Fig 3 (ref 12) of Harris reveals that both locking arrangements lie flat where the inner and

Art Unit: 3728

outer flaps (of the bottom panel) slightly overlap. Therefore, since the locking arrangement structure present in Harris meets the amended claim language and is capable of performing the intended use (i.e. lying flat) then the rejection is proper and maintained.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1,2,6-8,11-17,21-23,28,29,31,32,35,36,38,39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris (US Pat No 5,485,915).

As to claims 1,6,11,16,22,28,31,35 and 38, Harris discloses all the limitations of claim 1 except that Harris does not disclose that the secondary cut line (Fig 3, reference number 58) has a center that is significantly further from the terminal edge (Fig 3, bottom of blank) of the inner flap (Fig 3, reference number 46) than the rest of the cut line or that the fold line (Fig 3, see dotted line below cut line 58) is arcuate shaped

Art Unit: 3728

having a center closer to the terminal edge. However, it would have been an obvious matter of design choice to one of ordinary skill in the art to modify and have the secondary cut line's center significantly further from the terminal edge (i.e. V-shaped with apex being further from terminal edge) of the inner flap, since applicant has not disclosed that by doing so serves any purpose other than to assist in enabling the locking system to lie flat. Since Harris discloses a secondary cut line that allows the locking system to also lie flat (Fig. 2; Column 4, lines 30-38) without the requirement that the center of the cut line be further from the terminal edge than the rest of the cut line, applicant has not disclosed that that feature solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a uniform secondary cut line where the center is not necessarily further from the terminal edge than the remainder of the cut line. As to the arcuate shaped fold line, it would have been an obvious matter of design choice to one of ordinary skill in the art to modify and have the fold line arcuate shaped since such a modification would have involved a mere change in the shape of the component. A change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). The shape here (inasmuch as applicant discloses) seems ornamental in function with no apparent improvement over the carrier fold lines of Harris.

As to claims 2,8,17,23,29,32,36 and 39, while Harris does not disclose that the extension cuts turn and project towards the terminal edge of the inner flap, it would have been an obvious matter of design choice to one of ordinary skill in the art to modify and

Art Unit: 3728

have the extension cuts project towards the terminal edge of the inner flap, since applicant has not disclosed that having the cuts positioned in that manner solves any stated problem (other than what is already well known in the art that extension cuts prevent cuts from tearing under the stress when interacting with another locking component) or is for any particular purpose and it appears that the invention would perform equally well with the extension cut disclosed in Harris that projects away from the terminal edge of the inner flap (Harris Column 3, lines 9-17). Alternatively, it would have been obvious to one having ordinary skill in the art at the time the invention was made to rearrange the positioning of the extension cut towards the terminal edge of the inner flap (instead of away from the edge), since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

As to claim 7, Harris discloses that when the carrier is loaded, each primary male lock is engaged with a lock ledge formed by a primary female opening and the shoulder of each secondary male lock is engaged with a secondary locking ledge, thereby securing the articles in the carrier (Column 3, lines 5-17).

As to claims 12 and 13, Harris discloses that the carrier has at least two sets of primary male locks (Harris Fig 3, reference number 50) and corresponding primary lock ledges (reference number 56) as well as secondary male locks (reference number 52) and secondary locking ledges (reference number 58).

As to claims 14 and 15, Harris discloses a carrier that can carry at least one row of containers (Harris Fig 1).

As to claims 21 and 41, Harris discloses that the containers can be bottles or cans (Harris Fig 1; Column 4 lines 47-50).

Claims 3,4,5,9,10,18,19,24,30,33,34,37,40,42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris (US Pat No 5,485,915) as applied to claims 1,6,7,16,22,28,29,31,35 and 38 above and further in view of Oliff (US Pat No 5,941,453).

As to claims 3,9,18,24,30,33,37,40 and 42, Harris does not disclose that each secondary female opening has two slits that extends from the secondary cut line near each end of the fold line in a direction away from the terminal edge. However Oliff discloses a secondary female opening (Oliff Fig 2, reference number 58) that has two slits (reference numbers 50,52) that extend from a secondary cut line (reference number 54) near each end of the fold line (reference number 62) in a direction away from the terminal edge (Fig 1 at upper most boundary of the blank shown) to help the lock (Fig 2, reference number 40) from becoming disengaged (Column 4, lines 59-62). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the secondary cut line of Harris to include the slits, as taught by Oliff, to further prevent disengagement of the locking system.

As to claims 4,5,10,19 and 34 Harris as modified above discloses that each neck of the secondary male lock (Harris Fig 3, reference number 52) has two edges with the distance between the edges of the neck being less than the distance between the slits with the neck of the secondary male lock located in the secondary female opening between the slits (Column 3, lines 5-17). Harris also discloses that when the carrier is

Art Unit: 3728

loaded, each primary male lock is engaged with a lock ledge formed by a primary female opening and the shoulder of each secondary male lock is engaged with a secondary locking ledge, thereby securing the articles in the carrier (Column 3, lines 5-17).

As to claim 43, it would have been an obvious matter of design choice to have the pair of slits spaced apart a distance greater than the width of the neck of the secondary male lock for easier insertion of the male lock within the slit, which in turn will make the secondary male lock fit easier through the secondary female opening.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 3728

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SBP 8/4/06


JILA M. MOHANDESI
PRIMARY EXAMINER